Supreme Court, U.S.
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No. [redacted]234

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [redacted]1970

WM. E. GOETZ, ET AL.

Appellants

v.

BOARD OF REGENTS OF THE STATE TEACHERS COLLEGES OF TEXAS, NOW BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL.

Appellees

REPLY TO MOTION TO DISMISS OR AFFIRM

JAMES K. GARDNER
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NO. 1666

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1969

* * * * *

WM. E. GOETZ, ET AL

Appellants

VS

BOARD OF REGENTS OF THE STATE TEACHERS COLLEGES OF TEXAS, NOW BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL.

Appellees

* * * * *

REPLY TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

* * * * *

TO THE HONORABLE UNITED STATES SUPREME COURT:

Now come Appellants, William E. Goetz, et al, and respectfully reply to the "Motion To Dismiss or Affirm" filed in this cause by Appellees, and would show the Court as follows:

I.

There is no question but that the Supreme Court of the United States will not

review Judgments that rest on adequate and independent State grounds. Appellant in the Jurisdictional Statement discussed the only question of adequate and independent State grounds - whether the application of the parol evidence rule to set aside a stipulated and undisputed contract suffices. It is significant, then, that Appellee's Motion does not cite any authority or offer any argument as to why they contend that the judgment of the Texas Supreme Court rests on adequate and independent State grounds. The lack of argument or reasons is a significant admission that adequate and independent State grounds do not exist in this case.

II.

An examination of the facts will show that the parol evidence rule was not remotely applicable, was incorrectly applied, and was arbitrarily applied to duck the real issue. As stated in the dissenting opinion of the Texas Supreme Court:

> "The majority opinion neglects to pass on the only question in this case."
>
> "....we should not duck the only question (legality of the compromise agreement) existing in the minds of the contracting parties by resort to rules of evidence in order to reach an unjust and contrary result."

If the constitutional provision that States shall not pass laws impairing contracts is to have any meaning, then the

States cannot be allowed to frustrate these contracts by subtrefuge and indirection.

III.

The contract between the parties in this case was undisputed as to any material fact, and Wigmore in his work on evidence (which is quoted by the majority opinion of the Texas Supreme Court), addresses himself to the very error which has been done here. 10 Wigmore on Evidence 3rd Edition, Section 2431 points out that many courts apply "incorrect tests", starting on Page 102 it is stated:

> "It is not uncommon to speak of the present rule as a rule against 'varying the terms of the writing.'"
>
> "No doubt, that is precisely the result of applying the rule. But it can never serve as a test to determine in the first instance whether the rule is applicable. The phrase as a test is to reason in a circle; for it is to attempt to decide whether something conceded to be different from the writing ought to be excluded, by showing that it is different. All the phrases about transactions that 'vary' or 'contradict' or are 'inconsistant' involve the same futility. The fundamental question is as to the intent of the parties to restrict the writing to specific elements or subjects of the negotiation;....."

The evidence is undisputed and stipulated in our case that such was not the intention, yet the Texas Supreme Court makes the very mistake alluded to by Wigmore when it says on Page 454 "These extrinsic negotiations are ineffective under the parol evidence rule which precludes the giving of legal effect to extrinsic negotiations which have been specifically dealt with in the final writing." As Wigmore so aptly states, this is reasoning in a circle.

The United States Supreme Court has repeatedly held that in order to make the constitutional inhibition effective the United States Supreme Court must exercise an independent judgment in deciding as to the validity and construction of the law and the existance and terms of the contract. Jefferson Branch Bank vs Skelly 1 Black 436, 443, 17 L. Ed. 173; Bridge Propriators vs Hoboke & Company 1 Wall. 116, 17 L. Ed. 571; Wright vs Nagle 101 U. S. 791, 25 L. Ed. 921 and McGahey vs Virginia 10 S. Ct. 972, 135 U. S. 662, 34 L. Ed. 304. To quote the Supreme Court still further, "As this Court has re peatedly ruled, the Constitution affords no protection as against an impairment by judicial decision....but, although the State Court may have construed the contract and placed it's decision distinctly upon it's own construction, if it appears, upon examination, that in real substance and effect force has been given to the statute complained of, our jurisdiction attached." Columbia Railway Gas & Electric Company

vs State of South Carolina 261 U. S. 236, 43 S. Ct. 306 67 L. Ed. 629, 36 Harvard Law Review, 882.

CONCLUSION

It is respectfully submitted that the U.S. Supreme Court has jurisdiction.

DATED this 23 day of June, 1970.

Respectfully submitted:

EARLE COBB, JR.
JAMES K. GARDNER

By James K. Gardner
James K. Gardner

WE, Earle Cobb, Jr., and James K. Gardner, Counsel of Record for Appellants, in the above entitled cause, hereby state that all parties required to be served with the foregoing Reply have been served.

ATTORNEYS FOR APPELLANTS

By James K. Gardner
James K. Gardner